Professional Association of Golf Officials *and* Neil Boswell, Bryan Naugle, and Don Hamblin *and* Wayne Berry and Perry Williams. Cases 4–CB–7182 and 4–CB–7191

May 31, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND TRUESDALE

On February 17, 1995, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

The Union has excepted to the judge's finding that it violated Section 8(b)(1)(A) of the Act by filing state court lawsuits against Charging Parties Berry, Hamblin, Boswell, and Williams in an attempt to collect union dues and fees assessed for periods after they had resigned from the Union in early 1992.[2] The Union argues that the court might find that those Charging Parties owe the entire initiation fees plus dues for all of 1992 and even later years. We find no merit to that exception. The initiation fee of $1000 was payable over a period of 5 years and the Charging Parties had been billed for only $200 of that amount in April 1992. Moreover, the Union's constitution and bylaws provide that dues are payable at the December annual meeting or by voluntary checkoff.[3] Under those circumstances, we find that the Union has not shown that the Charging Parties agreed in any way to be liable for union dues and fees assessed after they had resigned from the Union and covering periods when they no longer were union members.[4] We therefore agree with the judge that, in the absence of a union-security provision in the collective-bargaining agreement, the Union's suits to recover those dues and fees may be enjoined by the Board because they have an objective that is illegal under Federal law.[5]

We also find no merit to the Union's argument (which it did not make in its brief to the judge) that because the Charging Parties assertedly had representatives at a meeting in which the Union agreed to pay specified amounts to Richard G. Phillips Associates (RGPA) in return for legal services, they may be liable for the obligations incurred on their behalf by the Union. Phillips, the only witness to testify concerning that meeting, did not testify that any of the alleged representatives indicated that the Charging Parties intended to maintain their union membership or to support the Union financially even if they resigned. Thus, there is no evidence to suggest that the Union, in incurring obligations to RGPA, acted to its detriment on the basis of any representations purportedly made on behalf of the Charging Parties with regard to their financial support of the Union.[6]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Professional Association of Golf Officials, Philadelphia, Pennsyvania, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

''(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Substitute the attached notice for that of the administrative law judge.

[1] We shall modify the judge's recommended Order and notice to delete the references to ''interfering with'' employees' Sec. 7 rights, which is not proscribed by Sec. 8(b)(1)(A).

[2] Whether or not those individuals ever actually joined the Union is a matter properly left to the court, as the judge found. It is undisputed that Charging Party Naugle never joined the Union, and the Union has not excepted to the judge's finding that it violated the Act by bringing suit against him.

[3] According to the Union's letter to unit members in April 1992, checkoff was to occur on a biweekly basis.

[4] See *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 328 (1991) (clear and unmistakable language required to waive employee's right to refrain from assisting a union of which he is not a member).

[5] *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731, 737–738 fn. 5 (1983).

[6] The Union also notes that the Charging Parties may be liable to RGPA for their portion of the obligations of the Union. Even if that is true, it is immaterial to this proceeding. The issue here is whether the *Union* may lawfully sue the Charging Parties for financial support, not whether *RGPA* may sue them for part of the Union's obligations.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT maintain and give effect to the following provision of our constitution and bylaws:

> Article 12.3.8—No member may resign from his membership in this Association before he has paid

all dues, assessments, fines and other obligations owing to the Association and no resignation shall become effective until such payment.

WE WILL NOT commence state court lawsuits against Neil Boswell, Bryan Naugle, Don Hamblin, Wayne Berry, and Perry Williams or any other individual employed by PGA Tours, Inc., seeking to compel payment of union dues, fees, and assessments for periods when the individual was not a member of our Union.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remove article 12.3.8 from our Union's constitution and bylaws.

WE WILL withdraw and dismiss that part of our complaint in *Professional Association of Golf Officials v. Neil Boswell, Bryan Naugle and Don Hamblin*, No. 1875 (Philadelphia County Court of Common Pleas, Trial Division, State of Pennsylvania), which refers to Bryan Naugle and reimburse Bryan Naugle for all expenses he has incurred in the defense of that complaint, including legal and travel expenses.

WE WILL withdraw and dismiss count II of our complaint in *Professional Association of Golf Officials v. Neil Boswell, Bryan Naugle, and Don Hamblin*, No. 1875 (Philadelphia County Court of Common Pleas, Trial Division, State of Pennsylvania), which seeks recovery against Neil Boswell and Don Hamblin on the basis of unjust enrichment, and amend the complaint to limit the amount sought in count I against Don Hamblin to $3,120.83 and against Neil Boswell to $722.50 and reimburse them for any expenses that they incurred in their defense of the portions of the complaint so withdrawn and dismissed.

WE WILL withdraw and dismiss count II of our complaint in *Professional Association of Golf Officials v. Wayne Berry and Perry Williams*, No. 1743 (Philadelphia County Court of Common Pleas, Trial Division, State of Pennsylvania), which seeks recovery against Wayne Berry and Perry Williams on the basis of unjust enrichment, and amend the complaint to limit the amount sought in count I against Wayne Berry to $2,970.83 and against Perry Williams to $3,120.83 and reimburse them for any expenses that they incurred in their defense of the portions of the complaint so withdrawn and dismissed.

PROFESSIONAL ASSOCIATION OF GOLF OFFICIALS

Frederick M. Walton, Esq. and *Denis C. Dice, Esq. (Harvey, Pennington, Herting & Renneisen, Ltd.*), of Philadelphia, Pennsylvania, for the Charging Parties.

DECISION

STATEMENT OF THE CASE

Findings of Fact and Conclusions of Law

BENJAMIN SCHLESINGER, Administrative Law Judge. The consolidated complaint alleges that the constitution and bylaws of the Respondent, Professional Association of Golf Officials (Union), violates Section 8(b)(1)(A) of the Act, because it prohibits members from resigning if they are not in good standing. The complaint also alleges that the Union's institution of legal actions to collect moneys claimed to be due to it after the individuals resigned violated the Act. The Union ''does not contest'' that the provision of its constitution violates the Act but denies that it violated the Act in any other respect.[1]

Jurisdiction is conceded. PGA Tour, Inc. (PGA) is a nonprofit Maryland corporation with offices in Ponte Vedra Beach, Florida, where it is engaged in the organization, promotion, and operation of professional golf tournaments. During 1994, it derived gross revenue in excess of $500,000 and performed services valued in excess of $50,000 in States other than Florida. I conclude, as the Union admits, that PGA is an employer within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude, as the Union admits, that it is a labor organization within the meaning of Section 2(5) of the Act. On March 25, 1992, the Union and PGA entered into a collective-bargaining agreement, effective through December 31, 1994, covering the following unit:

> All full-time professional golf tournament officials employed by the PGA Tour, Inc., on the Regular, Senior, and Ben Hogan [now Nike] Tours, but excluding all temporary employees, guards, and supervisors as defined in the National Labor Relations Act, and all other personnel.[2]

The agreement does not contain a provision requiring union membership as a condition of employment by PGA. There is, however, a checkoff provision ''[u]pon a tournament official's voluntary request.''

At all material times, Neil Boswell, Bryan Naugle, and Don Hamblin have been employed by PGA as officials on the Senior tour and Perry Williams and Wayne Berry on the Nike tour.[3] Naugle never applied for membership in the

[1] The relevant docket entries are as follows: The unfair labor practice charge in Case 4–CB–7182 was filed by Boswell, Naugle, and Hamblin on April 6, 1994, and amended on April 25 and July 18, 1994. The unfair labor practice charge in Case 4–CB–7191 was filed by Berry and Williams on April 15, 1994, and amended on April 25, 1994. The complaint issued on July 26, 1994, and the hearing was held in Philadelphia, Pennsylvania, on January 9 and 11, 1995.

[2] On December 6, 1991, after a Board-conducted representation election, the Union was certified as the exclusive collective-bargaining representative of the following employees: ''All professional golf tournament officials and tournament supervisors of the PGA Tournament, Senior PGA Tournament and Ben Hogan Tournament; excluding tournament director, guards and supervisors as defined in the Act.''

[3] On May 11, 1992, and January 1, 1993, respectively, Naugle and Berry became assistant tournament directors on the Senior and Nike

Continued

Union. In the fall of 1991, before the representation election, Richard Phillips, the attorney for the Union, telephoned Naugle to tell him about what the Union was trying to accomplish. Naugle explained that he was not interested in joining. He voted against the Union in the Board-conducted representation election. Afterwards, the Union mailed him an application for membership but he threw it away. The Union also sent him bills for dues and initiation fees. He threw most of those away too. Once he called Union Executive Board Member Boots Widener and told him that he would not pay the amount billed by the Union.

The other Charging Parties sent in application forms. Hamblin, Boswell, and Williams signed the following form on December 21, 1991, and January 1 and 3, 1992, respectively:

> I, [name], do hereby make application for membership to the Professional Association of Golf Officials (''PAGO'').
>
> It is my intent to adhere to the Constitution and By-Laws of PAGO and at all times conduct myself in a fashion consistent with the best interests of the Association and its constituent members.

Berry signed the same form on December 31, 1991, but placed an asterisk next to the second paragraph and added the following: ''It is impossible for me to agree to adhere to a document that I have not had the opportunity to read. I would appreciate the courtesy of the responsible party providing them as requested.'' Shortly after, the Union sent him the constitution.

It is questionable that any of the Charging Parties became members of the Union because, except for section 12.1.1, there was no compliance with the following provisions of its constitution and bylaws, particularly the provision that required the Union to accept the Charging Parties' applications:

> 12.1 An applicant shall be considered a member when he shall meet all the following requirement for membership:
>
> 12.1.1 He shall have executed a written application for membership on a form provided by the Secretary.*
>
> 12.1.2 He shall have tendered the initiation fees and dues by cash or on written authorization or check-off.
>
> 12.1.3 The Association shall have accepted his application and dues.
>
> 12.1.4 He shall have taken the oath of obligation as a member at the regular meeting following the action upon his application provided, however, that no applicant shall become a member in the first ten days following the filing of his written application. In the event the applicant shall fail to take the oath of obligation within a reasonable time following the acceptance of his application he shall forfeit the monies tendered except for good cause shown.
>
> * This requirement may be waived by the President.

The Union's regular yearly dues are $500, plus 3 percent of the member's compensation. Dues are payable ''at the Annual Meeting'' or by checkoff as provided in the collective-bargaining agreement. In addition, the Union charges an initiation fee of $1000, to be paid over 5 years. Subsequent to January 6, 1992, however, initiation fees increase to $3000, to be paid over 3 years. The Union's annual meeting is held each year during the month of December. None of the Charging Parties, except Williams, sent any money to the Union and there is no evidence that the Union accepted their applications (no less dues). On March 25, 1992, Boswell's supervisor, Bryan Henning, asked him whether he intended to go on strike at midnight that night. When Boswell replied that he did not, Henning said that union officials had notified the PGA that they intended to go on strike if the bargaining agreement was not entered into. If they did it might be necessary for those not on strike to work additional tournaments at different locations and asked whether Boswell would be prepared to go to New Orleans the next day. Boswell said that he would and shortly ''resigned.'' He was never enamored with the Union that he had voted against. He joined only because in August 1991 Mark Russell, later a union official, told him that membership in the Union would be mandatory and that every rules official had to be a member in order to work. In March, however, he ''resigned'' because he was upset that the Union had said that there was unanimous support for the strike, when in fact he opposed it; he was no longer concerned with keeping his job, because he found that he did not have to be a union member; and he would never strike the PGA. Nonetheless, almost a month later, on April 20, 1992, Union President Wade Cagle wrote to all members of the unit, about 17 tour officials, including the Charging Parties:

> Our Association has agreed to retain the services of Richard G. Phillips Associates for a period of four years. The retainer to be paid is thirty thousand dollars ($30,000) annually.
>
> In addition, we have agreed to pay, for services rendered in forming the Association and in negotiating our current collective-bargaining agreement a fee of one hundred thirty-five thousand dollars. ($135,000).
>
> The Board of Directors is imposing a two thousand dollar ($2,000) assessment, which should be paid to PAGO directly within the next two weeks.
>
> Additionally, your yearly remittance to PAGO is $2,170. This figure has been arrived at through application of the dues and initiation fees formula adopted in our Constitution and By-Laws, as follows:

3% of $49,000 average salary	$1470
Plus:	500
Plus: $200 of $1000 initiation fee	200
Total:	2170

tours, respectively, a position that, the General Counsel contends, is excluded from the bargaining unit. Because the complaint is based solely on the allegation that the Union was attempting to obtain dues from employees who resigned from or never joined the Union, I decline to rule on whether Naugle and Berry moved to positions outside of the unit, an issue that the parties never litigated.

> Please sign the appropriate Check-off Authorization and return, along with your executed Limited Personal Guarantee to PAGO in the enclosed envelope. Please accompany these with your check in the amount of two thousand dollars ($2,000) which will cover your special assessment referred to hereinabove. [Sic.]
>
> Note: The amount to be deducted every two weeks will be $83.46 in 1993 and 1994. Due to the fact that the amount will be deducted in eighteen (18) payments rather than twenty-six (26), the 1992 payments will be $120.56.

Williams, Berry, and Hamblin were unhappy with the amounts that Cagle was asking for and ''resigned'' by letter dated May 1, 1992, which was received by the Union on May 4.[4] Williams was the only one of the Charging Parties who sent checks (not cash, as required by the constitution) with his application, one for $200, the portion of his initiation fee, and the other for $500, the annual dues. The Union never cashed the checks and finally on June 30, 1992, he stopped payment on them.

On July 13, 1993, the Union filed a complaint against Berry and Williams in the *State of Pennsylvania, Philadelphia County Court of Common Pleas* (index no. 1743) seeking initiation fees and annual dues of $4170 and $6980, respectively, on two counts: First, breach of contract for failure to pay the dues, initiation fees, and assessments required by the constitution; and, second, unjust enrichment by receiving the benefits of union representation, including the negotiation of the collective-bargaining agreement, without paying the dues, initiation fees, and assessments. On February 18, 1994, the Union filed a complaint against Boswell, Naugle, and Hamblin in the same court (index no. 1875) seeking initiation fees and annual dues of $9200, $9680, and $9460, respectively. The complaint against Boswell and Hamblin was similar to the other complaint, but the complaint against Naugle was different because he never made any attempt to join the Union, so it was based solely on the unjust enrichment theory.

In December 1991 the Union adopted its constitution and bylaws, which contained the following provision (sec. 12.3.8): ''No member may resign from his membership in this Association before he has paid all dues, assessments, fines and other obligations owing to the Association and no resignation shall become effective until such payment.'' *Machinists Local 1414 (Neufeld Porsche-Audi)*, 270 NLRB 1330–1333 (1984), instructs that: ''any restrictions placed by a union on its members' right to resign . . . are unlawful.'' See also *Pattern Makers v. NLRB*, 473 U.S. 95, 106 (1985); *Marble Polishers v. Granite Cutters Local 32*, 896 F.2d 1404, 1412–1413 (3d Cir. 1990). Consistent with that principle, the Board has found that a union may not insist that its members owe nothing to the union (be in good standing) before being permitted to resign. *Birmingham Printing Pressmen's Local 55 (Birmingham News)*, 300 NLRB 1 (1990); *Graphic Communications Local 458 (Noral Color)*, 300 NLRB 7 (1990); *Writers Guild (Alliance of Producers)*, 297 NLRB 92 (1989). I conclude, and the Union does not contest, that the Union's constitution violates Section 8(b)(1)(A) of the Act because it prohibits its members from resigning unless they have paid all the debts to the Union.

As will be seen the Union used this illegal clause to prevent the lawful resignations of four of the Charging Parties. But the Union was not concerned with whether the tour officials even joined it, as shown by its suit against Naugle, from whom the Union has no cognizable claim to union dues and initiation fees because he never joined the Union. Although its claim rests on the legal theory of unjust enrichment, paragraph 23 of its complaint against Naugle specifically alleges that he owes initiation fees and annual dues of $9680. Section 8(b)(1)(A) makes it unlawful for a union to restrain or coerce employees in their exercise of the rights guaranteed by Section 7, which are to engage in or refrain from engaging in ''concerted activities for the purpose of collective bargaining or other mutual aid or protection.'' Naugle had the right to refuse to provide financial support to the Union because that is an activity protected by Section 7, which is the right to refrain from any and all union or other concerted activities. *Machinists Local 1414 (Neufeld Porsche-Audi)* supra, 270 NLRB at 1333; *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 327 (1991). The Union, on the other hand, had no right to commence a legal action designed to force Naugle, in the absence of a union-security provision or any effort (no less any indication) by him to become a union member, to provide such support as that is a form of restraint or coercion barred by Section 8(b)(1)(A). *Electrical Workers IBEW Local 396 (Central Telephone)*, 229 NLRB 469 (1977). Accordingly, I conclude that the Union violated Section 8(b)(1)(A) by pursuing its legal action against Naugle.

Despite the clear language of the complaint that it seeks from Naugle the precise amount of the dues and other fees, and despite the Union's agreement with Phillips showing that his fees were based on the benefit that inured to the members of the unit and thus the assessment that what they were expected to pay was based on what they benefited, the Union relies in both lawsuits on not only a breach of contract but also unjust enrichment. Its theory is that the members received the benefit of union representation in its petition for certification of representative to the Board and the Union's representation during the negotiations and adoption of the collective-bargaining agreement between it and the PGA, as well as significant pay increases and benefits achieved due to its representation.[5] The Union thus claims that it undertook to do all these things in justifiable reliance that all the golf officials, including the Charging Parties, would pay their dues and initiation fees. As a result, the Charging Parties were unjustly enriched when the Union negotiated the collec-

[4] Because the tour officials travel from tournament to tournament and are frequently away from their homes for weeks at a time, no one testified with precision about the date he received Cagle's letter. The parties stipulated, however, that the Charging Parties had no knowledge of the Union's fee negotiations with Phillips prior to the receipt of Cagle's letter.

[5] Powers insisted that his fee of $135,000 was based on gains that he obtained for the tour officials. I note, however, that attached to the collective-bargaining agreement is an agreement to pay two individuals severance benefits due to their impending retirement. One was Wayne Cagle, the head of the Union, who was to be paid a severance benefit of $100,000. There was no explanation of what portion of Powers' fee was due to the negotiation of the two severance benefits. Cagle's is particularly disturbing because he was a union representative with whom Powers negotiated his fee, which may be subject to some question in the court proceeding.

tive-bargaining agreement and they refused to pay union dues and initiation fees.

In this unjust enrichment claim the Union seeks to rewrite the law concerning the payment of union dues. Until its action the law seemed to be settled that collection of dues was governed by Section 8(a)(3) of the Act, which permits employers to enter agreements with a union requiring employees to join a union after the 30th day of their employment. The Union has another way to collect dues: In the absence of a union-security clause, and in the absence of membership in the union, because the employee has not joined or has resigned, it claims that it is nonetheless able to collect dues and initiation fees. Its claim is basically based on the notion that no person should be a ''free rider,'' taking advantage of a union's work in representing the employee without paying for that representation. This argument was expressly considered by Congress when it passed the 1947 amendments to the Act and the result was a compromise provision that allowed unions to charge nonmembers for costs associated with collective bargaining only where a contract requiring union membership as a condition of employment had been negotiated. *Electrical Workers IUE Local 444 (Paramax Systems)*, 311 NLRB 1031, 1033–1036 (1993); *Plumbers Local 141 (International Paper)*, 252 NLRB 1299, 1305–1306 (1980), enfd. 675 F.2d 1257 (D.C. Cir. 1982), cert. denied 459 U.S. 1171 (1983). Because the collective-bargaining agreement here contains no provision requiring union membership as a condition of employment, no matter how reasonable it may seem that Naugle and the others should have to pay their fair share of collective-bargaining expenses, the Union's contention must be rejected.

The Union supports that proposition only by citing the dissenting opinion in *Machinists Local 697 (H.O. Canfield Rubber)*, 223 NLRB 832 (1976), to which I add the dissent by Circuit Judge Mikva in *Plumbers Local 141*, 675 F.2d at 1262. The majority in both decisions, however, represents the law and the law is that Congress rejected the notion that there may be no ''free riders.'' A labor organization has a duty to represent all the employees in the unit for which it is certified. Those employees may or may not be members of the union. As the Board wrote in *Machinists Local 697* supra, 223 NLRB at 834:

> In *The Wallace Corporation v. N.L.R.B.*, 323 U.S. 248, 255–256 (1944), the Supreme Court stated, ''The duties of a bargaining agent selected under the terms of the Act extend beyond the mere representation of the interests of its own group members. By its selection as bargaining representative it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially.'' Similarly, the Board has held that an exclusive bargaining agent has taken on the responsibility to act as a genuine representative of all the employees in the bargaining unit, ''irrespective of union membership or the existence of a union security contract.'' *Peerless Tool and Engineering Co.*, 111 NLRB 853, 858 (1955), enfd. sub nom. *N.L.R.B. v. Die and Tool Makers Lodge No. 113, International Association of Machinists, AFL*, 231 F.2d 298 (C.A. 7, 1956), cert. denied 352 U.S. 833 [1956]. Involved here is a quid pro quo which Congress made basic to the Act. The Act requires an employer to bargain in good faith with a duly selected exclusive bargaining representative, despite the fact that a substantial minority in the unit may not want to be represented by that particular union or any union at all. In exchange for the protection of the Act, the bargaining representative must represent all unit employees.

The Union's lawsuits, by seeking to recover union dues and initiation fees on the basis of unjust enrichment, are merely attempts to obtain a union-security agreement when there is none. The Union claims enrichment for functions that it had to perform in its obligation to represent all the members of the unit no matter whether the Charging Parties had joined it or not. By suing for the amount of the dues, assessments, and initiation fees, the Union seeks, in its unjust enrichment claim, to impose a financial obligation on all the members of the unit, without regard to their union membership, and unlawfully attempts to impose a service fee on nonmembers in the absence of a collective-bargaining agreement creating a union-security obligation. I conclude that the Union's maintenance of such claims against Boswell, Hamblin, Berry, and Williams violates Section 8(b)(1)(A).[6]

The Union contends that the Board may not restrain the prosecution of the state court action unless that action lacks a reasonable basis in fact or law or if the action was instituted only as retaliation, citing *Bill Johnson's Restaurants v. NLRB*, 461 U.S. 731, 748–749 (1983). Because it concludes that there is a reasonable basis for its actions and that there was no retaliation involved its actions cannot be held in violation of the Act. But deferral is not appropriate when the state court action has an objective illegal under Federal law. *Bill Johnson's Restaurants*, above at 737–738 fn. 5; *Electrical Workers IBEW Local 113 (Pride Electric)*, 283 NLRB 39 fn. 2 (1987); *American Postal Workers (Postal Service)*, 277 NLRB 541 fn. 2 (1985). The Union's attempt to extract financial support from nonmember Naugle in the absence of a valid union-security provision is clearly an objective that Federal law prohibits. Thus, I conclude that the Act mandates that the Union stop prosecuting Naugle immediately. Furthermore, resignations from unions are to be recognized, not ignored. The Union utterly ignored the Charging Parties' resignations, when the Act requires that they be given effect. Here, again, I conclude that the Union must stop prosecuting its lawsuits involving the other Charging Parties for periods after their resignations.

What may not appropriately be deferred under *Bill Johnson's Restaurants*, as conceded by the General Counsel, is the possibility that the state court may find that by submitting applications for union membership Boswell, Hamblin, Berry, and Williams joined the Union and subjected themselves to pay union dues and fees. Thus, the General Counsel does not contend that the Union violated the Act by seeking

[6] The Union's reliance on then-Chairman Murphy's dissent in *Machinists Local 697* is, in any event, misplaced. She merely indicated that a nonmember, who sought to have a union process and arbitrate grievances, might be required to help defray the associated costs through the payment of the equivalent of the dues-charged members. Nothing in her dissent suggests that a nonmember, such as Naugle, with no union-security obligation and no desire to be represented by the Union, could be forced to pay dues or service fees in the absence of a request for services. See *Electrical Workers IBEW Local 396 (Central Telephone)*, supra.

to compel them to pay dues for the periods between the submission of their applications for membership and the receipt by the Union of their subsequent resignations. But, the General Counsel contends the Union is not limiting itself to proceeding against Boswell, Hamblin, Berry, and Williams for the dues and fees they would have owed if they had been members in early 1992.[7]

I agree. Contrary to the Union's unsupported contention, there is no factual or legal basis to show that the employees' 1992 resignations were unlawful and did not deserve to be honored. The Union paid no attention to their letters. Instead, it dunned the employees and finally brought lawsuits to collect dues and other amounts that accrued long after the Union received the resignations, the date that a resignation is effective on receipt and terminates any obligation to continue the payment of dues and fees. *Machinists Lodge 1233 (General Dynamics)*, 284 NLRB 1101, 1102 fn. 9 (1987); but see *Pattern Makers (Michigan Model Mfrs.)*, 310 NLRB 929, 930 (1993), applying a different rule for the purposes of immunity from union discipline. In computing the amounts due to the Union I find, in agreement with the General Counsel, that dues accrue for not greater than a monthly period. That accords with the Union's bill to Hamblin in September 1993 for dues through May 1992 in the sum of $858.74. Members who sign a checkoff pay their dues in equal installments deducted from their pay every 2 weeks. The Union's brief concedes the propriety of a pro rata amount: ''At the very least, [the Union] could prevail to the extent that amounts could be owed for a pro-rata share from each individual determined to have been a member of the [U]nion for the time up until they resigned effectively.'' (I am not finding that at the time of the resignations any amounts were due. The union constitution required that dues be paid only at the time of the yearly meeting, the next being in December 1992, so there were technically no 1992 dues owing because the Charging Parties resigned long before then. The other manner of paying dues was by checkoff but, at the time of Cagle's April 20 letter quoted above, apparently no checkoff was in place. Otherwise, he would not have referred to the fact in 1992 dues were to be deducted in 18 installments rather than 26. By that time Boswell had already resigned and the other resignations followed shortly.)

The Union billed for amounts due long after resignations of the Charging Parties. On May 18, 1993, the Union billed Williams for $6980, which included 1993 dues of $2490 and 1992 dues after his resignation of May 1, 1992. The Union billed Boswell on June 3, 1993, for $7080, which included 1993 dues of $2680 and the assessment that was imposed in Cagle's letter of April 20, 1992, even though he resigned on March 25, 1992.[8] It revised this bill on June 28 to a total of $6800, but that still included the $2000 assessment and $2200 in 1993 dues, plus $200 for the 1993 installment of initiation fees. Yet in its lawsuit it claims initiation fees and dues in the sum of $9200, an additional $2400, which I infer is an additional year's dues and initiation fees for 1994. On September 24, 1993, it billed Hamblin for initiation fees of $2000, plus dues through May 1992 in the sum of $858.74; yet its lawsuit claims the nonpayment of dues and initiation fees in the sum of $9460, which I again infer must include dues for 1993 and 1994, well after his resignation of May 1, 1992. On May 18, 1993, it billed Williams, who resigned on May 1, 1992, for 1993 dues in the sum of $2490, in addition to 1992 dues and assessments of $4490, a total of $6980, the amount it claims is due in its lawsuit. The only Charging Party from whom the Union appears not to claim 1993 dues is Berry, whose alleged debt of $4170 represents only amounts from 1992 dues and assessments, but clearly included amounts for dues after he resigned.

By instituting legal actions against the Charging Parties for dues and other fees that became due after the Charging Parties resigned, the Union gave no effect to their resignations and violated Section 8(b)(1)(A) of the Act.

The unfair labor practices found herein, occurring in connection with PGA's business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Union has engaged in unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, I will order that it both cease giving effect to the provision in its constitution that restricts resignation from membership and physically remove that provision from the document. I will also order the Union to cease filing state court lawsuits designed to either force nonmembers to pay dues and fees or to force resigned members to pay dues and fees for periods after their resignations, absent the existence of a valid contractual provision requiring membership.[9] The Union will withdraw its lawsuit against Naugle and reimburse him for any expenses he has incurred in defending the lawsuit. The Union will amend its complaints against Boswell, Hamblin, Berry, and Williams by deleting the unjust enrichment counts and limiting the damages being sought to the period of time that preceded their resignations.[10] ($722.50 against Boswell, $3,120.83 against Hamblin, $2,970.83 against Berry, and $3,120.83 against Williams.) The Union will reimburse them for any expenses associated with defending the portions of the lawsuits against them that have been found unlawful. *Machinists Lodge 91 (United Technologies)*, 298 NLRB 325, 393 (1990), enfd.

[7] The General Counsel intends, if the court determines that they never became members, to remedy the Union's violation of the Act by seeking the expenses that they incurred in defending that portion of the lawsuits.

[8] The date of the assessment is controlling, not the date (March 26, 1992) that Phillips entered into his fee arrangement with the Union for negotiating the fee agreement. Because there was no proof submitted by the Union of this date, I infer that the assessment occurred at the time when Cagle sent his April 20 letter, almost a month after Boswell's resignations.

[9] The Union's counsel agreed to stay all state court proceedings until 30 days after the Board's resolution of the underlying unfair labor practice complaint.

[10] Boswell resigned in a letter received no later than March 29, 1992, so that he may owe 3 months' dues. The Union received the resignation of other three on May 4, so they may owe 5 months' dues. Accordingly, my computations are based on adding 3 percent of the salaries, based on the schedule attached to the collective-bargaining agreement, and $500 dues, and dividing the sum by one-third or five-twelfths, as the case may be. I have added to that the initiation fee of $200 and, except for Boswell, the $2000 assessment.

934 F.2d 1288 (2d Cir. 1991). Finally, the Union's office is at the office of its attorney. The posting of a notice there will do little to advise its members and the other tour officials about the violations because they do not normally perform their functions in the vicinity of the Union's office and are not likely to see the notice unless it is mailed. Accordingly, I will recommend that the Union mail the notice to all its members. I will also recommend that it sign sufficient copies of the notice and provide copies to the PGA for posting, if it is willing.

On these findings of fact and conclusions of law and on the entire record,[11] I issue the following recommended[12]

ORDER

The Respondent, Professional Association of Golf Officials, Philadelphia, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining and giving effect to the following provision of its constitution and bylaws:

> Article 12.3.8—No member may resign from his membership in this Association before he has paid all dues, assessments, fines and other obligations owing to the Association and no resignation shall become effective until such payment.

(b) Commencing state court lawsuits against Neil Boswell, Bryan Naugle, Don Hamblin, Wayne Berry, and Perry Williams, or any other individual employed by PGA Tours, Inc. (PGA), seeking to compel payment of union dues, fees, and assessments for periods when the individual was not a member of the Union.

(c) In any like or related manner interfering with, restraining, or coercing PGA's employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remove article 12.3.8 from the Union's constitution and bylaws.

(b) Withdraw and dismiss that part of its complaint in *Professional Association of Golf Officials v. Neil Boswell, Bryan Naugle and Don Hamblin*, index no. 1875 (Philadelphia County Court of Common Pleas, Trial Division, State of Pennsylvania), which refers to Bryan Naugle and reimburse Bryan Naugle for all expenses he has incurred in the defense of that complaint, including legal and travel expenses.

(c) Withdraw and dismiss count II of its complaint in *Professional Association of Golf Officials v. Neil Boswell, Bryan Naugle and Don Hamblin*, index no. 1875 (Philadelphia County Court of Common Pleas, Trial Division, State of Pennsylvania), which seeks recovery against Neil Boswell and Don Hamblin on the basis of unjust enrichment, and amend the complaint to limit the amount sought in count I against Don Hamblin to $3,120.83 and against Neil Boswell to $722.50, and reimburse them for any expenses they incurred in their defense of the portions of the complaint so withdrawn and dismissed.

(d) Withdraw and dismiss count II of its complaint in *Professional Association of Golf Officials v. Wayne Berry and Perry Williams*, index no. 1743 (Philadelphia County Court of Common Pleas Trial Division, State of Pennsylvania), which seeks recovery against Wayne Berry and Perry Williams on the basis of unjust enrichment, and amend the complaint to limit the amount sought in count I against Wayne Berry to $2,970.83, and against Perry Williams to $3,120.83, and reimburse them for any expenses they incurred in their defense of the portions of the complaint so withdrawn and dismissed.

(e) Post at its business office and meeting hall in Philadelphia, Pennsylvania, copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Union's authorized representative, shall be posted by the Union immediately on receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material. Appropriate signed copies of the notice shall be returned to the Regional Director for transmission to PGA Tours, Inc., for posting, should it be willing, at appropriate locations; and the Union shall, at its expense, send a signed copy of the notice to all individuals employed by PGA Tours, Inc., in the bargaining unit represented by the Union.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Union has taken to comply.

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[11] The reporter has consistently confused who was speaking in the official transcript. In particular, the references to Attorney Walton from pp. 32, L. 9, through 40 all properly refer to Attorney Opalka.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''